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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1952

No. 480

ROBERT DES MARAIS and PACIFIC ALASKA AIR-EXPRESS, INC. (a corporation),
Petitioners,

vs.

RUTH BECKMAN, as Administratrix of the Estate of Tom Skoland, also known as Thorvald Skoland, Deceased,
Respondent.

PETITION FOR WRIT OF CERTIORARI to the United States Court of Appeals for the Ninth Circuit.

DAVIS AND RENFREW,
Box 477, Anchorage, Alaska,
Attorneys for Petitioners.

Subject Index

		Page
I.	Summary statement of matter involved	2
II.	Jurisdictional statement	3
III.	Questions presented	3
IV.	Reasons relied on for the allowance of the writ	4

Table of Authorities Cited

Cases

	Page
Cohen v. United Airlines, 17 F.S. 865	4
Ortiz v. Eastern Airlines, 2 Avi. 14798	4
Smith v. Pennsylvania Central Airlines Corporation, 76 F.S. 940	4
Sweeney v. Erving, 228 U.S. 233	4

Codes

28 U.S.C., Section 1254(1)	3

I. SUMMARY STATEMENT OF MATTER INVOLVED.

This is an action brought in the Third Judicial District Court of Alaska by Ruth Beckman, as Administratrix of the Estate of Tom Skoland, also known as Thorvald Skoland, Deceased, Respondent, against Robert Des Marais and Pacific Alaska Air-Express, Inc., a Corporation, Petitioners herein for damages sustained by the death of Tom Skoland supposedly arising as a result of an airplane crash. The trial was by Court without jury and judgment was rendered in favor of Respondent. An appeal from said judgment was taken to the Ninth Circuit Court of Appeals which affirmed the judgment by memorandum opinion on August 14, 1952. A motion for rehearing was made which was denied on September 29, 1952. The principal question involved on appeal was the application of the doctrine of *res ipsa loquitur*.

The facts in brief are:

Pacific Alaska Air-Express, Inc., a corporation, owned and operated as a common carrier a C-47 type aircraft for hire. On November 3, 1948 at 10:26 P.M. Pacific Alaska Air-Express, Inc. dispatched a C-47 type aircraft from Anchorage, Alaska to the point of destination, Seattle, Washington. On board as a paying passenger was Tom Skoland. At 5:10 the following morning the flight gave a position report by radio indicating a position about 146 miles southeast of Yakatak, Alaska, and estimated the flight would arrive over Sitka, Alaska, at 5:44 A.M. That was the last communication from the flight. Extensive and extended searches were made by various air-

sea rescue units, but no survivors or wreckage were found. The Civil Aeronautics Board could make no finding for probable cause of the accident. These facts were settled by stipulation. (Tr. R. p. 6.)

II. JURISDICTIONAL STATEMENT.

Statutory provision believed to sustain the jurisdiction of this Court is Section 1254(1) of Title 28 of the United States Code which provides:

> "Cases in the Courts of Appeals may be reviewed by the Supreme Court by the following methods:
>
> 1. By Writ of Certiorari granted upon the petition of any party to any Civil or Criminal case, before or after rendition of judgment or decree."

III. QUESTIONS PRESENTED.

The questions herein presented are:

1. Robert Des Marais was not the owner nor was he in control of the aircraft. On what possible theory can his liability be predicated?

2. Where no accident is evidenced, is it possible to appoint an administratrix upon the presumption of death and then upon such presumption raise an inference of negligence against Pacific Alaska Air-Express, Inc., a corporation?

IV. REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT.

1. The Court of Appeals by affirming the judgment without rendering a written opinion has created chaos and conflict among the Federal Courts.

Smith v. Pennsylvania Central Airlines Corporation, 76 F.S. 940 and the instant case hold the doctrine of *res ipsa loquitur* applicable. *Cohen v. United Airlines,* 17 F.S. 865 and *Ortiz v. Eastern Airlines,* 2 Avi. 14798 hold contra and state that the doctrine is not applicable.

2. The facts present an important question of law that should be settled for under the ruling in this case, liability without fault is imposed upon common air carriers.

3. The decision is in conflict with the doctrine of *res ipsa loquitur* as announced in *Sweeney v. Erving,* 228 U.S. 233. If the instant case is the correct law, it has in fact changed the substance and meaning of *res ipsa loquitur* as universally accepted.

4. The flight was over water by a common air carrier. Common water carriers are accorded the doctrine of "Perils of the Sea". The common carriers of the air should likewise be given the benefit of the perils inherent in air travel over water. "Perils of the Air" should be applicable to air carriers in over water flights.

Wherefore, the petitioners pray that a Writ of Certiorari issue under the seal of this Court directed to the Court of Appeals for the Ninth Circuit, com-

manding said Court to certify and send to this Court, full and complete transcript of the record and of the proceedings of the said Ninth Circuit Court had in the case number, and entitled on its docket, No. 13,176, Robert Des Marais and Pacific Alaska Air-Express, Inc., a Corporation, Appellants v. Ruth Beckman, as Administratrix of the Estate of Tom Skoland, also known as Thorvald Skoland, Deceased, Appellee, and that this cause may be reviewed and determined by this Court as provided for by the statutes of the United States; and that the judgment herein of said Ninth Circuit Court be reversed by the Court, and for such further relief as to this Court may seem proper.

Dated, Anchorage, Alaska,
November 26, 1952.

DAVIS AND RENFREW,
By EDWARD V. DAVIS,
Attorneys for Petitioners.